

Fall 2009 Special Town Meeting Zoning Amendments – Summary

The following summary describes the purpose and effect of the zoning amendments being considered by the Fall 2009 Special Town Meeting. Some amendments will be moved in a modified form.

ARTICLE 6, FOOTNOTE A. AMENDMENT – Footnote a. of Table 3, Dimensional Regulations, allows a wide range of dimensional requirements to be modified under a Special Permit. However, the current language of footnote a. only refers to the modification of front setbacks, which is the original dimension for which footnote a. was created. This is a vestigial situation and an oversight. The proposed revised language would make no changes in the current regulations, but would simply recognize the wide variety of dimensional requirements to which footnote a. applies.

ARTICLE 7, NON-CONFORMING STRUCTURES – Many neighborhoods in Amherst were built before zoning regulations were created and include properties that have both lots and buildings that are ‘non-conforming’ under the current regulations. Section 9.200 of the Zoning Bylaw currently authorizes the Building Commissioner to allow alterations to single family and duplex properties that are either: 1) non-conforming in terms of basic lot frontage or area, or 2) non-conforming as to other dimensional requirements for buildings (setbacks, coverage, floors or height), so long as the change does not result in any greater non-conformity or a change in use on the property. But Section 9.200 does not authorize the Building Commissioner to allow alterations to properties that are non-conforming in both ways, even when the proposed change will not increase or alter the existing non-conformity in any way. The Building Commissioner and property owners have asked that this language be amended to authorize the Commissioner to allow properties with both kinds of non-conformity to undertake alterations, so long as those proposed alteration would not make the property more non-conforming or result in a change of use. Any proposal to increase non-conformity or change a use on a non-conforming property would still have to seek relief through a Special Permit.

ARTICLE 8, SIGN AREA – Existing zoning regulations impose limits on the sizes of different kinds of signs, but don’t specify how to calculate that size (maximum surface area). To fill that gap, a series of Building Commissioners have determined that: 1) the area of a sign constitutes the area of a rectangle that encloses the entire sign, whatever its shape, and 2) that any open area enclosed by the structure of a sign—for instance, for a free-standing sign, the open area between the posts and underneath the sign panel—has to be counted as part of the sign’s area. But operating under administrative policies that lack supportive language in the Bylaw is poor practice and exposes the regulations themselves to challenge. This amendment provides a more detailed description of how to calculate the area of a sign’s visual display, and would only count open areas if they were clearly part of the design of the sign’s display. As written, the amendment would also disallow a waiver of Site Plan Review approval for any change in signs not meeting the default sign regulations, and would provide a missing definition for projecting signs.

ARTICLE 9, MEDICAL OFFICES – This amendment seeks to fill in a gap in the way that Amherst regulates medical offices of differing kinds. Currently the Bylaw only recognizes two extremes: 1) an accessory medical office in the home of the doctor, or 2) “medical or dental centers”, which currently has to cover everything from the office of a single practitioner with a few staff to a very large aggregation of multiple medical group practices and associated uses in one or more buildings. No other distinctions are currently made, forcing all new medical offices to be regulated as medical centers, no matter how small they are. This amendment would leave the accessory medical office regulation in place, but would divide medical offices as principal uses into several categories: 1) medical office, 2) medical group practice, and 3) medical center, on the basis of size (number of health care providers of different kinds). It would also add a ‘clinic or emergency care facility’, a non-hospital category currently not covered in the Bylaw. The categories would be

differentiated on the basis of the number of principal health care providers and support staff, and on the nature of the use itself. The amendments would recognize existing differences, and would allow the different categories of medical offices to be regulated on the basis of their relative impacts from visitation.

ARTICLE 10, PHASED GROWTH EXTENSION – The current Article 14, Phased Growth, had been declared unconstitutional in earlier court cases. Under the current language in Section 14.20 of the Zoning Bylaw, the entire article will ‘sunset’ and cease to exist on November 15, 2009. Phased growth sought to control new development in Amherst by ‘phasing’ the number of building permits that could be issued for new dwelling units in any given year, on the basis of points which reflected the degree to which a proposed development met the community’s preferences. The previous five year ‘sunset’ period was intended to provide the Town with time to complete and implement a Master Plan. That Plan is very close to completion and adoption, but is not yet finished. The Planning Board has been working on an amendment to replace the existing phased growth bylaw with one that would use the principles identified in the Master Plan to modify the potential density (total number of dwelling units) or dimensions (the size of buildings and how much area they occupy on a lot) of new development based on how well it meets the community’s standards. That work, too, is close to being completed, but is not yet ready.

For these reasons, upon recommendation by Town Counsel, the Planning Board is proposing to extend the ‘sunset’ period for the current phased growth regulations for one more year, to November 15, 2010, and plans to bring a replacement amendment to Town Meeting as soon as possible, probably for the 2010 Annual Town Meeting next spring.

ARTICLE 11, NEIGHBORHOOD BUSINESS (B-N) DISTRICT - This amendment creates a new Neighborhood Business (B-N) District emphasizing dense but modest mixed uses, to serve as: 1) a transitional zone between business areas and residential neighborhoods, or as 2) a stand-alone small neighborhood business district within a larger residential neighborhood, allowing people to walk or bike to goods and services. Creating a new district requires describing the purpose of the district, generating permit requirements and standards and conditions for all current land uses in that new district, creating dimensional requirements, and inserting references to the new district appropriately throughout the Zoning Bylaw.

ARTICLE 12, DEPOT CENTER REZONING – This article proposes to amend the Official Zoning Map for a number of properties on Main, Dickinson, College, Railroad, and High Streets surrounding the historic Amherst Depot. This rezoning would to change a number of R-G zoned properties currently occupied by non-conforming business (mostly office) uses to the new Neighborhood Business (B-N) designation, and would change numerous COM properties in the area to B-VC, B-L, or B-N, in order to allow mixed uses on those properties. The current COM district prohibits residential uses. The purpose of this rezoning is to encourage the transformation over time of a former industrial area into a mixed use neighborhood center.

ARTICLE 13, GREEN BUILDING & LOT COVERAGE – This amendment seeks to recognize and encourage the use of green roof and permeable surface paving technologies by alter the way in which building and lot coverage are calculated when green roofs or permeable paving is used. As of this writing, a motion will be made to refer the green roof sections of the amendment back to the Planning Board for further study. Those sections of the amendment dealing with permeable paving and lot coverage affect the degree to which paving will count as part of the maximum coverage of a lot by buildings and paved surfaces. Article 13 proposes to vary this based upon the permeability of the paving material used. 100% of impermeable paving would count toward lot coverage. Only 50% of moderately permeable material and 25% of highly permeable material would count—measured using a long-established standard methodology.